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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,896	12/04/2003	Michael H. Mackin	OM131	9608
26009	7590	12/17/2004	EXAMINER	
ROGER M. RATHBUN			GILBERT, SAMUEL G	
13 MARGARITA COURT			ART UNIT	PAPER NUMBER
HILTON HEAD ISLAND, SC 29926			3736	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/727,896	MACKIN, MICHAEL H.
	<b>Examiner</b>	<b>Art Unit</b>
	Samuel G Gilbert	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) 18 and 19 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/6/2004</u> . | 6) <input type="checkbox"/> Other: ____ .  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 5/6/2004 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 6-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 - bolt means, lines 2-3 and nut means, line 3, have been set forth without positively recited functions.

Claim 6 - it is unclear if "a bolt means" and "a nut means" are the same as set forth in claim 3. Appropriate corrections should be made throughout the claims.

Claim 7 - "said adjustable mounting means" lacks antecedent basis

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg et al (6,022,310).

Claim 1 - element -22- is a base, element -26- is an infant support, element -124- is a canopy lift bracket, a canopy is shown in Figure 7 and includes endplate -74-, and system -126- is an adjustable mounting system including a canopy interface bracket -144- and -158-.

Claim 2 - telescoping drive -112- is a vertical structure member.

Claim 3 - bolt -186-, nut means threaded hole -182- and opening -184- is enlarged, column 8 line 58.

Claims 4-6 - bolt -210-, nut means, threaded hole -198- and holes -200- and -184- are elongated (enlarged) in the vertical and horizontal directions respectively.

Claim 7 - element -150- is a pivot bracket and pivots at pivot pins -162- and -168-.

Claim 8 - pins -162- and -168- are in vertically spaced opening and circular holes are arcuate. Further the hole including a bolt and nuts -174- and -170- is also in spaced vertical relation.

Claim 9 - elements -170- and -174- are used to lock in the desired pivot orientation.

Claim 10 - pivot bracket -150- includes openings for pins -168-, -162- and the bolt for nuts -170- and -174-.

Claim 13 - elements -88- are a pair of heaters.

Claims 14-17 - the method is set forth in column 10, lines 32 through lines 57 - the structure is considered the same as applied to claims 1-10 and 13 above. The enlarged openings are considered vertical or horizontal openings.

***Allowable Subject Matter***

Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 6,669,625 and 6,231,499 teach related incubator hood structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G Gilbert  
Primary Examiner  
Art Unit 3736

sgg